

APPEAL NO. 032147
FILED OCTOBER 3, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 16, 2003. The hearing officer determined that respondent 1 (claimant) sustained a compensable occupational disease injury with a date of injury of _____, and that the claimant had disability from March 15 through the date of the hearing. The hearing officer signed a Texas Workers' Compensation Commission Order for Attorney's Fees on July 29, 2003, approving 2.3 hours of the 6.3 hours requested attorney's fees for the appellant (attorney). The attorney appeals and requests that he be awarded an additional \$600 for the 4 excluded hours in attorney fees. There is no response from either respondent 2 (carrier) or the claimant.

DECISION

Reversed and rendered.

We review attorney's fees cases under an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorney requested a total of 6.0 hours under the heading "Formal Resolution: Contested Case Hearing"; 4.0 of the 6.0 hours were for hearing preparation and the remaining 2.0 hours for attendance at the hearing. The Attorney Fee Processing System printout reflects that the hearing officer granted 2.0 hours, but denied the remaining 4.0 hours for the following reason "in the absence of justification text, attorney fees as approved were reasonable necessary and performed for the benefit of claimant, except 4.00 hour[s] not approved due to no justification text for exceeding guidelines." However, Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.4(c) (Rule 152.4(c)) provides that for participation at the hearing, the actual time in the hearing plus 4.0 hours are allowed. The hearing officer, therefore, abused his discretion in excluding the 4.0 requested hours on the basis that they exceeded the guidelines as they are, in fact, allowed by the guidelines.

The hearing officer's order on Attorney's Fees is reversed and a new decision is rendered approving the 6.30 total hours requested by the attorney for a total of \$925.00.

Chris Cowan
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Thomas A. Knapp
Appeals Judge